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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/830,121

04/23/2004

Jacques Habatjou

119426

9007

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7590

04/19/2007

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EXAMINER

BOECKMANN, JASON J

ART UNIT

PAPER NUMBER

3752

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/830,121

Applicant(s)

HABATJOU, JACQUES

Examiner

Jason J. Boeckmann

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-17, 20-26, 28-34, 36, 38, 40, 41 and 43-46 is/are rejected.
- 7) ☒ Claim(s) 8, 18, 19, 27, 35, 37, 39, 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/12/07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Schilling (DE 3517122).

Schilling shows a spray device comprising a spray mechanism (1) including a housing for receiving a vector gas supply and a reservoir (3) containing a substance to be sprayed capable of being releasably mounted to the device so that the substance can be selectively dispensed from the spray mechanism. The reservoir comprising a closure member (6) to close the passage when the reservoir is not mounted on the device. The closure member opens in response to the reservoir being mounted on the device (4).

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2, 5-7, 9-17, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122) in view of Rookard, Jr. (4,272,768).

Schilling shows a spray gun comprising: a spray mechanism (1), and a reservoir containing a substance for spraying, the reservoir is arranged to be removably mounted to the device, the reservoir comprising; a substance outlet passage (11, 7), a closure member (6) to close the passage when the reservoir is not mounted on the device. The closure member opens in response to the reservoir being mounted on the device (4). Schilling does not specifically disclose that the reservoir comprises a first partition, first and second compartments capable of containing the substance, the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of the first partition, wherein the substance comprises a cosmetic or a care product. However, Rookard, Jr. shows a reservoir comprising a first partition (6) defining first and second compartments (the right and left compartments shown in figure 1). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to add the partition of Rookard, Jr.'s reservoir to the reservoir of Schilling in order to prevent uncontrollable sloshing which results in a stable reservoir even when partially full as taught by Rookard, Jr.(column 2, lines 39-41). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to spray a cosmetic or care product from the spray device of Schilling as modified by Rookard, Jr. in order to improve a person's appearance.

Regarding claims 2, 5 and 6, the partitions of Rookard, Jr. that are being added to Schilling's reservoir include a second partition (on the right side of figure 1) on one side of the first partition that defines two sub-compartments (top and bottom) that are in communication with each other, a third partition (on the left side of figure 1) located on the other side of the first partition defining two sub-compartments (top and bottom), the first partition being between the second and third partitions (figure 1).

Regarding claim 7, the reservoir of Shilling includes a base portion (30) and a lid-forming portion (19) fitted on the base portion (figure 1).

Regarding claims 9-11, the substance outlet passage (7, 11) is defined at least by an end piece (7) which projects from the reservoir (figure 1). The end piece including a sealing O-ring (12).

Regarding claim 13, the device of Shilling includes a fastener (5) arranged to cooperate by complementary shapes with the spray mechanism (1).

Regarding claim 12, Schilling as modified by Rookard, Jr. shows all aspects of the applicant's invention as in the rejection of claim 1 above, but does not specifically disclose that the reservoir is partially transparent. However, transparent reservoirs are common in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to make a portion of the reservoir transparent in order to see how much substance is left in the reservoir.

Regarding claim 14, the substance is sprayed in response to a suction created by a vector gas (inherently part of the spray gun in figure 1).

Regarding claim 16, the spray mechanism includes a control member to control the vector gas and the substance to be sprayed (figure 1).

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schilling (DE 3517122) in view of Rookard, Jr. (4,272,768) further in view of Coffee (4,306,685).

Schilling as modified by Rookard, Jr. shows all aspects of the applicant's invention as in the rejection of claim 1 above, but does not specifically disclose that the check valve is a ball check valve. However, Coffee shows a ball check valve (42) for a pressurized container. Therefore, It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to substitute the ball check valve of Coffee for the check valve of Schilling as modified by Rookard, Jr. in order to create a more uniform seal when the valve is closed.

Claims 21, 22-26, 28, 33, 34, 36, 38, 40, 41, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauptmann (EP 0014993).

Hauptmann shows a spray device for spraying at least one substance contained in a reservoir (3), the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas, the vector gas being stored in a pressurized receptacle (4). The device further comprising an adjustment valve (20) for adjusting a flow rate of the sprayed substance and a control member (7) capable of being operated by a user to act both on a vector gas dispenser valve (14, 16) and the

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adjustment valve, the adjustment valve comprising a plunger (20) arraigned to co-operate with an associated seat (21) so that the flow rate of the sprayed substance varies with the spacing between the seat and the plunger, but does not specifically disclose that the device is used for spraying a cosmetic or care product. However, It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to spray a cosmetic or a care product from the device of Hauptmann in order to improve a person's appearance.

The intended use recitation "for spraying at least one substance contained in a reservoir, the substance being taken for the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas, the vector gas being stored in a pressurized receptacle" has been considered and has been given little or no patentable weight because it is part of the preamble and the intended use language only requires the apparatus to be capable of performing the task.

Regarding claims 22-24, the control member is a pivoting lever (figure 1) and the dispenser valve (16) is secured to the pressurized receptacle and is triggered by tilting a control rod (19).

Regarding claim 25, the seat is situated on a support piece for supporting the nozzle (28).

Regarding claims 28 and 33, the reservoir is removable (figure 1) and the plunger is slidable in a direction parallel to the direction along which the substance is sprayed (figure 1).

Regarding claim 34, the device includes a housing for receiving the pressurized container as shown in figure 1.

Regarding claim 36, the device includes a return spring (22) for the plunger.

Regarding claim 38, the device includes an end piece, (the linkage in the handle of the device in figure 1) arraigned to be engaged on a control rod of the dispenser valve, wherein the control member (7) is arraigned to be capable of pressing against the end piece.

Regarding claims 40 and 41, the device is generally elongate in shape and the control member comprises a presser (7) face on a longitude side of the device and the pressurized container (4) and the reservoir (3) are held together in a fixed manner (figure 1/2).

Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauptmann (EP 0014993) in view of Bara (US 2003/0108487).

Hauptmann shows all aspects of the applicant's invention as in the rejection of claim 1 above, but does not specifically disclose that the device comprises two outlet nozzles for the vector gas and an outlet for the substance, with the two vector gas outlet nozzles converging in a direction going away from the device and the substance outlet orifice comprises an axis substantially in a same plane as the vector gas outlet nozzles. However, Bara shows a spraying device comprising two outlet nozzles for the vector gas (7) and an outlet for the substance (6), with the two vector gas outlet nozzles converging in a direction going away from the device and the substance outlet orifice

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comprises an axis substantially in a same plane as the vector gas outlet nozzles (figures 1-4). Therefore, It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to substitute the two vector gas nozzles (7) and the substance outlet (6) of Bara's spraying device for the nozzle configuration of Hauptmann's spraying device in order to suck the substance into the flow of the vector gas more efficiently due to having two nozzles of vector gas orientated towards each other.

Allowable Subject Matter

Claims 8, 18, 19, 27, 35, 37, 39 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 1/11/2007 have been fully considered but they are not persuasive.

Regarding applicants remarks towards claim 20, Schilling shows spray apparatus comprising a housing (the gun housing) for receiving a vector gas supply (the air that is used to propel the paint). When the air (vector gas) supply is connected to the housing, the housing is receiving a vector gas supply, and is therefore "for receiving a vector gas supply."

In response to applicant's argument that there is no suggestion to combine the references of Schilling and Rookard as applied to claim 1, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rookard teaches partitions inside a reservoir to prevent uncontrollable sloshing, which is the motivation to add the partitions to the reservoir of Schilling. Schilling as modified by Rookard teaches the structure of the present invention, but do not specifically disclose to spray a cosmetic product. In regards to the applicant's arguments toward the spraying of the cosmetic product, the examiner asserts that it would have been obvious to one of ordinary skill in the art to use the device of Schilling as modified by Rookard to spray a cosmetic substance to improve a persons appearance.

In response to applicant's argument that Hauptman does not show that "a suction is created at an outlet orifice of the reservoir" as recited in the preamble of claim 21, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In addition, the recitation has been given little patentable weight because the recitation occurs in the preamble. A preamble

is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

The pressurized receptacle of Hauptman is shown as number 4 in figure 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason J. Boeckmann whose telephone number is (571) 272-2708. The examiner can normally be reached on 7:30 - 5:00 m-f, first Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JJB JJB 4/16/07


Joseph A. Kaufman
Primary Examiner
4/16/07